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OFFICE OF THE CLERK

July 11, 2013

Confidential

Via Hand Delivery

Jeff S. Jordan
Supervisory Attorney, CELA
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6734 – Jeffrey C. Hurt

Dear Mr. Jordan:

Introduction

This is in response to the complaint filed in the above-referenced matter by Citizens for Responsibility and Ethics in Washington ("CREW") and the Campaign Legal Center ("CLC") alleging that our client, Jeffrey C. Hurt, exceeded the biennial aggregate contribution limit of \$46,200 to federal candidates during the 2011-2012 election cycle.

As will be discussed further below, Mr. Hurt inadvertently exceeded the biennial aggregate limit for contributions to federal candidates, the biennial limit for contributions to federal political action committees (PACs) and party committees, and the overall federal biennial limit. A lack of awareness of the existence of aggregate contribution limits, as well as general inexperience in the world of political giving, led to the excessive contributions. Working at Mr. Hurt's request, our firm has undertaken prompt, diligent efforts to secure refunds from the recipient committees. Thus far, Mr. Hurt has received **\$82,500.00** in refunds.

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2011-2012 Contributions

Our research indicates that during the 2012 cycle, Mr. Hurt contributed \$159,100 to federal candidates, inadvertently exceeding the biennial aggregate contribution limit of \$46,200 by \$112,900.¹ See **Exhibit 1** for a list of the federal candidate contributions for the 2011-2012 cycle. Although not addressed in the body of the complaint, a review of Mr. Hurt's contributions also revealed that during the 2012 cycle, Mr. Hurt contributed \$98,300 to federal PACs and party committees, exceeding the \$70,800 biennial aggregate contribution limit by \$27,500.² See **Exhibit 2** for a list of the PAC and party contributions for the 2011-2012 cycle. Because of these excessive contributions, Mr. Hurt also exceeded the \$117,000 overall biennial limit by \$140,400.³

Refund Efforts

Our firm evaluated public information from the Commission's website and information provided by Mr. Hurt to clarify which candidate committees, PACs, and party committees in fact received contributions from him during the relevant period. We sought refunds from those committees that last received funds (i.e., committees that received funds after Mr. Hurt had reached his aggregate contribution limit). See **Exhibit 1** and **Exhibit 2**.

Our firm initiated refund efforts on June 18, 2013 by first sending hard-copy letters to the recipient committees. On the same day the hard-copy letters were sent, we also e-mailed the recipient committees a copy of the letters. See **Exhibit 3** for samples of the letters and emails.

Our refund request efforts have been highly successful – as of July 11, 2013, Mr. Hurt has received refunds of \$82,500 of the \$140,400 in excessive contributions. Unfortunately, a number of committees have either terminated or are without funds. See **Exhibit 1** and **Exhibit 2**. Four committees have not responded to our repeated refund requests – Jim Risch for US Senate Committee, Jeff Flake for US Senate, Johnson for Congress, and Friends of Doc Hastings. Contributions to those four committees total \$20,000. We will continue to contact these committees via email, telephone, and hard copy letter until we receive a response. It looks as though most, if not all, of those four remaining committees have the funds available to refund.

Thus far, we have received refunds from the following committees:

¹ 2 U.S.C. § 441a(a)(3)(A); 11 C.F.R. § 110.5(b)(1)(i). For the contribution limits during the 2011-2012 election cycle, see Press Release, Federal Election Commission, "FEC Announces 2011-2012 Campaign Cycle Contribution Limits" (February 3, 2011), available at <http://www.fec.gov/press/20110203newlimits.shtml> ("FEC Press Release").

² 2 U.S.C. § 441a(a)(3)(B); 11 C.F.R. § 110.5(b)(1)(ii). See FEC Press Release cited at n. 1.

³ 2 U.S.C. § 441a(a)(3); 11 C.F.R. § 110.5(b). See FEC Press Release cited at n. 1.

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Date of Contribution	Committee	Amount
7/26/2011	Friends of John Thune	\$5,000
8/19/2011	Wicker for Senate	\$5,000
8/25/2011	Bob Corker for Senate	\$2,500
9/30/2011	RickPerry.org	\$2,500
2/1/2012	Chambliss for Senate	\$5,000 ⁴
2/16/2012	Whitfield for Congress	\$5,000
3/19/2012	Tim Murphy for Congress	\$5,000
5/7/2012	Romney for President	\$5,000
5/12/2012	Citizens for Josh Mandel Inc.	\$2,500
5/24/2012	Gibbs for Congress	\$2,500
7/23/2012	Heller for Senate	\$5,000
9/19/2012	Deb Fischer for US Senate	\$2,500
10/16/2012	Committee to Elect Charlie Summers	\$2,500
10/17/2012	Friends of Dave Joyce	\$2,500
10/17/2012	Ted Cruz for Senate	\$2,500
8/21/2012	National Republican Senatorial Committee	\$25,000
9/20/2012	Republican National Committee	\$2,500
Total as of 7/11/2013		\$82,500

Also see the "Status of Refund Request" columns from **Exhibit 1** and **Exhibit 2** for a summary of the refund efforts.

The Mitigating Circumstances

We urge the Commission to work with us to resolve this matter in a way that is fair to Mr. Hurt—a relative novice in the area of political giving who was completely unaware of the aggregate two-year contribution limits of the federal law. As the attached declaration (**Exhibit 4**) demonstrates, Mr. Hurt:

- Was relatively inexperienced in the world of political contributions (He first became a significant contributor in the 2009-2010 cycle, long after any public discussion or press about the 2002 McCain/Feingold aggregate limits ceased);
- Was not aware of the existence of the federal aggregate contribution limits and does not recall receiving any aggregate contribution limit information from committees

⁴ The Chambliss for Senate Committee refunded \$2,500.00 in February 2013, and \$2,500.00 in June 2013.

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soliciting funds, but rather recalls merely receiving information about the immediate limit on giving to such committees;

- Did not seek legal advice when dealing with political contribution matters, and had no basis for realizing he should seek any expert advice in this area; and
- Immediately directed that every reasonable effort should be made to seek refunds and resolve matters with the Commission to the extent possible.

The Commission can discern from its database of contributors and contributions that significant aggregate donations from Mr. Hurt did not appear until the 2009-2010 election cycle. In fact, prior to the 2010 election cycle, Mr. Hurt had contributed less than \$25,000 to federal elections. Mr. Hurt became active as a donor primarily because of the 2008 election results, when it appeared to him that the business sector was going to be increasingly under siege. He was thus receptive to contribution solicitations from candidates, PACs, and party committees that would help elect leaders focused on promoting traditional business interests and policies. Mr. Hurt had been financially successful over the years, and he came to believe that responding favorably to the many requests for contributions coming his way would help strengthen American business over time.

As the Commission probably is aware, the standard practice of federal committees soliciting contributions is to only make reference to the contribution limit for giving to the particular committee in question. The standard practice, in other words, is to not make any reference whatsoever to the 2-year aggregate contribution limits that were created under the 2002 McCain/Feingold amendments of the Federal Election Campaign Act. This is hardly surprising since the limits are difficult to explain (an overall limit, two sub-limits, and one sub-sub-limit), and recipient committees have no practical way of effectively monitoring compliance in a way that could be helpful to donors but not unduly cumbersome.⁵

Mr. Hurt did not have any awareness of the 2-year aggregate contribution limit until the complaint in this matter was brought to his attention. Note that Ohio state law does not have aggregate contribution limits for contributions to nonfederal candidates, so this was not a concept Mr. Hurt was likely to know about by virtue of any state-level contribution activity. Moreover, he recalls seeing nothing in any solicitation materials from federal committees that referenced the 2-year aggregate limits. Indeed, the solicitation materials from the 2011-2012 period that he could find do not contain any such references.⁶ Mr. Hurt logically has assumed during the period he has been actively making contributions that the soliciting committees (with better access to

⁵ Perhaps the Commission could issue "best practice" guidance to all federal committees suggesting that solicitations include at least some reference to the 2-year aggregate limits so that donors would gain more awareness over time, but this would not change the fact that donors in the 2011-2012 election cycle were *not* getting notice from soliciting committees about the 2-year aggregate limits.

⁶ See Exhibit 5 for sample solicitation materials received by Mr. Hurt during the 2012 election cycle.

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campaign finance experts) would bring the relevant contribution limits to his attention. They did not.

There is no plausible reason for Mr. Hurt to have had awareness of the 2-year aggregate contribution limits. There are very few apparent violations of these limits brought to the attention of the Commission, and there is virtually no public reporting of FEC enforcement in this area.⁷ The FEC itself doesn't appear to have an internal system for proactively generating enforcement cases involving the 2-year aggregate limits and then publicizing such enforcement efforts.⁸ And while the FEC does a fairly good job of referencing the 2-year aggregate limits in a few places on its website, individual donors realistically cannot be expected to search out these snippets of information in the normal course of their daily lives.

Mr. Hurt understands the general caution that "ignorance of the law is no excuse."⁹ In hindsight, he certainly wishes he had consulted a campaign finance law expert of some sort. The reality is that this never occurred to him because, as noted above, he assumed the soliciting committees had included in the solicitation materials all relevant advice regarding contribution limits.

Mr. Hurt deeply regrets any excessive contributions that he made during the 2011-2012 time frame. Since learning of this problem, Mr. Hurt has worked with our firm to promptly cure the improper funding and resolve this with the Commission.

Requested Resolution

As the Commission is aware, a plausible constitutional challenge to the biennial aggregate contribution limits is currently pending at the United States Supreme Court in *McCulcheon, et*.

⁷ As the Commission knows, this firm assisted Ms. Lisa Falcone with a *sua sponte* submission regarding her inadvertent 2-year aggregate excessive contributions (ADR Case #572, resolved with Settlement Agreement signed September 4, 2011), but there does not appear to have been any press coverage of the resolution of that matter. While there was some coverage of the Commission's resolution of the Arnold Cenac matter (MUR 6234 Conciliation Agreement signed August 20, 2012), there does not seem to have been any focus on the 2-year aggregate limit aspect of the violations involved. See *Houma Towing Firm to Pay \$170,000 Fine for Illegal Contributions to Landrieu, Vitter*, Staten Island Advance website ("silive.com"), Aug. 22, 2012, http://blog.silive.com/alex_test/2012/08/houma_towing_firm_to_pay_17000.html (last visited July 2, 2013). Finally, the Commission's resolution of the Jack Antaramian matter (MUR 6463 Conciliation Agreement signed August 13, 2012) does not seem to have generated any press coverage about the 2-year aggregate limit.

⁸ Given the difficulty of knowing whether a particular donor in the database indeed is responsible for various reported contributions (due, e.g., to fathers, sons, and grandfathers with the same name possibly living at the same residence, and all the complications of properly reporting reattributions, redesignations, refunds, and joint fundraising transfers), this certainly is understandable.

⁹ Oliver Wendell Holmes framed it this way: "Ignorance of the law is no excuse for breaking it." *The Common Law* [47-48], available at <http://www.gutenberg.org/files/2449/2449-h/2449-h.htm>.

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*al. v. FEC.*¹⁰ That case is to be argued in the upcoming October term of the Court. If the Court finds the biennial aggregate contribution limits to be unconstitutional, it would be unfair and unjust to have pursued any civil penalty against Mr. Hurt.

Given the pending Supreme Court decision, the various mitigating circumstances noted earlier, and the large amount of refunds received, Mr. Hurt respectfully urges that the Commission impose no civil penalty against him. Mr. Hurt, however, would be amenable to placing all the refunds received from recipient committees in an escrow account so that they could be disgorged to the U.S. Treasury if the Commission is ultimately victorious in the *McCutcheon* case. This would be a substantial sum, and it would help cover any U.S. Government expenses for handling this matter.

To achieve an agreed resolution of this matter along the lines just suggested, Mr. Hurt urges that the Commission's Alternative Dispute Resolution (ADR) process be used.¹¹ If ADR is not deemed appropriate, Mr. Hurt respectfully requests that Pre-Probable Cause Conciliation procedures be used.¹²

Mr. Hurt is amenable to signing an agreement laying out the relevant facts and committing himself to full compliance with the contribution limits in the future. Though such agreement will become public and he may suffer some reputational injury as a result, he is willing to take this course of action. We respectfully urge the Commission to follow this approach so this matter can be promptly resolved without protracted use of additional legal resources.

Sincerely,



Scott E. Thomas

Dickstein Shapiro LLP



Jennifer L. Carrier

Dickstein Shapiro LLP

¹⁰ See Brief for Appellant Shaun McCutcheon, No. 12-536 (May 6, 2013), available on FEC website at http://www.fec.gov/law/litigation/mccutcheon_sc_mcc_brief.pdf.

¹¹ See Federal Election Commission, *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, May 2012, at 23-24, available at http://www.fec.gov/em/respondent_guide.pdf.

¹² See 11 C.F.R. §111.18(d). See also Federal Election Commission, *Guidebook for Complainants and Respondents on the FEC Enforcement Process*, May 2012, at 16-18, available at http://www.fec.gov/em/respondent_guide.pdf.